



**IPRT**  
Irish Penal Reform Trust

**Submission of the  
Irish Penal Reform Trust**

**to the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment (CPT)**

**in preparation for the  
2006 CPT visit to Ireland**

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# 1. Introduction

This submission has been prepared by the Irish Penal Reform Trust (IPRT) for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in advance of its 2006 visit to places of detention in Ireland. Its purpose is to highlight our key concerns regarding the treatment of prisoners and detainees in the State, and to encourage the CPT to review these issues during its visit.

The information contained in this submission is drawn from a number of sources. These include:

- Published reports from the Irish Prison Inspector, the Prison Visiting Committees and the National Prison Chaplains.
- Media reports
- Parliamentary Questions
- Individual anecdotal reports provided to the IPRT from various sources including prisoners, ex-prisoners, prisoners' families, community/voluntary workers, solicitors and prison officers.
- The personal experiences of IPRT members

Wherever possible, citations are provided for published accounts substantiating the issues highlighted.

## 1.1 About the Irish Penal Reform Trust

Founded in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of people in prison and the progressive reform of Irish penal policy.

Our work is based on the belief that the Irish Prison Service must meet or exceed international best practice and human rights standards, and that Ireland must reduce the overuse of incarceration by addressing the social inequality at the root of much criminal behaviour, and through the implementation of effective non-custodial sanctions and restorative justice programmes.

The IPRT engages in numerous activities in pursuit of our mandate. These include:

- Original research on prison issues and prison conditions
- Analysis of prison policy and justice legislation
- Constitutional legal challenge over inadequate mental health care in prisons
- Engagement with government and elected officials
- Conferences and public fora on key prison and justice issues
- Public education via our website, newsletter and internet bulletin
- Partnership and collaboration with Irish human rights organisations
- International work on joint penal reform initiatives
- Media work and commentary

The IPRT is a registered charitable organisation.

## 2. Prison Conditions & Oversight

### 2.1 Background

Past reports from the CPT have highlighted concerns over poor conditions of confinement, inadequate sanitation facilities, prison overcrowding and lack of purposeful activities for prisoners. All of these concerns are still evident within the Irish prison system.

Exacerbating these pre-existing problems is the significant increase in the number of remand prisoners in Ireland since the coming into effect of the Bail Act 1997 in May 2000. The length of time spent on remand is also increasing. This serves to underline the importance of meeting the entitlements and needs of remand prisoners.

Despite these poor conditions, there is a dearth of effective independent oversight of prisons in the State. The Government has failed to a) place the Prison Inspector on an independent and statutory footing, b) create an independent Prison Ombudsman empowered to investigate individual complaints from prisoners, and c) to ratify the Optional Protocol to the United Nations *Convention Against Torture*.

### 2.2 Issues of concern

1. Lack of in-cell sanitation, or “slopping out”, continues to be a particularly serious problem at Mountjoy, Limerick and Cork Prisons. In 2004, a group of prisoners launched an unsuccessful legal challenge over the lack in proper in-cell sanitation.<sup>1</sup>
2. Even in newer prisons with in-cell sanitation, overcrowding means that many prisoners are forced to use the toilet in view of others. Such conditions have been criticised by the European Court of Human Rights as among those that can lead to a breach of Article 3 protections.<sup>2</sup> Indeed, the Court recently found that

*[S]ubjecting a detainee to the humiliation of having to relieve himself in a bucket in the presence of other inmates can have no justification, except in specific situations where allowing visits to the sanitary facilities would pose a concrete and serious safety risk.<sup>3</sup>*

3. Overcrowding continues to be a serious concern, particularly in prisons such as Castlerea<sup>4</sup>, Cork<sup>5</sup> and the Dochas Centre for Women<sup>6</sup>. In some of these institutions, reports show that the prisoner population in some wings often approaches double the official capacity.

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<sup>1</sup> K Donaghy. "Prisoners to sue State over 'slopping out' rights breach" in the *Irish Independent* (14 July 2004).

<sup>2</sup> Peers v. Greece, 33 E.H.R.R. 51 (2001) at 75.

<sup>3</sup> Kehayov v. Bulgaria, Application no. 41035/98 (14 April 2005) at 71.

<sup>4</sup> *Castlerea Visiting Committee 2004 Annual Report* at 1.

<sup>5</sup> *Cork Prison Visiting Committee Annual Report 2004* at 1.

<sup>6</sup> *Mountjoy Visiting Committee Annual Report 2004* at 3.

4. Although separate, the accommodation provided to remand prisoners in Cloverhill is inadequate and overcrowded. Three prisoners share a cell measuring 11 metres square.<sup>7</sup> The limited space afforded prisoners in Cloverhill has already been criticised by CPT.
5. Female prisoners on remand and remand prisoners outside Dublin are not provided with separate accommodation, as required by international standards. Remand prisoners in Dóchas Centre for Women, Cork, Portlaoise and Limerick prisons are accommodated together with convicted prisoners.
6. There is evidence that prisoners are experiencing difficulties in maintaining contact with the outside world. For example, the Report of the Prisons Inspectorate on Cloverhill Prison noted that prisoners complained about the length of time allowed for the use of the telephone which is restricted to six minutes. Complaints as to the short duration of these calls were also heard from detainees in Cloverhill interviewed for a recent IPRT report on immigration-related Detention in Ireland which recommended time spent speaking to a solicitor should not be included in this allocation.<sup>8</sup> Given that prisoners have rights both to the necessary facilities to prepare their defence and to contact with family and friends, it would appear inappropriate that time spent speaking to a solicitor is deducted from the overall time allocated.
7. There is little by way of structured activity in place in Cloverhill prison. Prisoners can avail of the gym, exercise yard and library but outside these activities there is very little to do. A Learning and Teaching Centre has now been built within the prison, although regrettably this is not yet in operation due to staffing issues. This has a negative impact on remand prisoners' psychological well-being.
8. There is a lack of independent statutory oversight and investigation of prison conditions. The Government has failed to place the Irish Prison Inspector on an independent and statutory footing, and the newly published *Prison Rules, 2005* empower the Minister to pre-screen and censor the reports of the Prison Inspector prior to their publication.<sup>9</sup>
9. There is no independent system to receive, investigate and act upon complaints or grievance made by prisoners. Under the *Prison Rules, 2005*, the only options available to a prisoner in this regard are appeals to the Prison Governor or the Minister of Justice (neither of which is credible as an impartial adjudicator of complaints), or to the Prison Visiting Committee, which has no authority to act on complaints. The Minister of Justice has refused to create an independent Prisons Ombudsman to investigate prisoner grievances.<sup>10</sup>

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<sup>7</sup> D Kinlen, *Irish Prison Inspectorate Revisit Inspection of Cloverhill Prison 20<sup>th</sup> and 21<sup>st</sup> January 2004* (Department of Justice, Equality and Law Reform, Dublin: 2004) at 7.

<sup>8</sup> M Kelly. *Immigration Related Detention in Ireland* (Irish Refugee Council, Irish Penal Reform Trust/Immigrant Council of Ireland, Dublin: 2005).

<sup>9</sup> *Prison Rules, 2005* at 16(8) state "The Minister may exclude a part or parts of a report from publication or from laying before the Houses of the Oireachtas if publication or laying of such part or parts would (a) be against the public interest, or (b) adversely affect the rights of an individual."

<sup>10</sup> M McDowell. Written Answer to Parliamentary Question from Aengus O Snodaigh, TD (27 November 2002).

10. The Government has failed to sign or ratify the Optional Protocol to the UN *Convention Against Torture*, despite the fact that the British Government has done so. This failure contravenes obligations under the *Good Friday Agreement* that the Irish and British Governments harmonise human rights protections in the two jurisdictions on the island.

### 3. Mental Health

#### 3.1 Background

The issue of mental health care in prisons is one that has been highlighted by the IPRT over many years.<sup>11</sup> This work has documented our concerns over the inappropriate use of incarceration to detain people with mental illness, the lack of adequate standards of mental health care in prisons and the use of solitary confinement in padded cells for mentally ill and suicidal prisoners.

Two recent reports commissioned by the Government have again emphasised the issue of mental health in Irish prisons.

*Mental Illness in Irish Prisoners*, conducted by a team from the national forensic mental health service at the Central Mental Hospital, involved interviews with over 1,500 prisoners. The report found the rate of serious mental illness among sentenced prisoners to be at least 13 times that among the general population, and the rate among prisoners on remand to be 38 times the community rate.<sup>12</sup> The report also concluded that rates of depression and other forms of mental illness among sentenced prisoners of 29% for men and 60% for women in prison.<sup>13</sup>

A 2005 report prepared for the Probation and Welfare Service on the relationship between homelessness and incarceration also expressed concerns about mental illness among prisoners.<sup>14</sup> Just over one-third (35%) of those people homeless at the time of committal said they had been diagnosed as having mental health illness and of them two-thirds had been hospitalised in a psychiatric institution. Two-thirds of female prisoners homeless on committal stated that they had previously been diagnosed with a mental health problem. These figures call into serious question the appropriateness of the use of prison as a warehouse for the mentally ill.

According to Dr. Harry Kennedy, Director of the Central Mental Hospital in Dublin, "Prison is a toxic place for people with serious mental illnesses."<sup>15</sup>

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<sup>11</sup> See V Bresnihan. *Out of Sight, Out of Mind: The solitary confinement of mentally ill prisoners* (Irish Penal Reform Trust, Dublin: 2001); V Bresnihan. *To be or Not to be in Observation Cells: A discussion paper on the introduction of observation cells for mentally ill and suicidal prisoners* (Irish Penal Reform Trust, Dublin: 2003).

<sup>12</sup> C O'Brien. "Mentally ill end up in jail due to glaring gaps" in *The Irish Times* (6 December 2005).

<sup>13</sup> C O'Brien. "High rate of mental illness found in remand prisoners" in *The Irish Times* (6 December 2005).

<sup>14</sup> M Seymour & L Costello. *A study of the number, profiles and progression routes of homeless persons appearing before the courts and in custody* (Centre for Social and Education Research, Dublin: 2005).

<sup>15</sup> C O'Brien. "High rate of mental illness found in remand prisoners" in *The Irish Times* (6 December 2005).

On the basis of this situation, the IPRT is pursuing a legal challenge against the State seeking a declaration that it has failed in its constitutional obligation to provide adequate psychiatric care to people in prison. In September 2005 – in an historic legal decision – the High Court judge ruled that the IPRT has *locus standi* to bring the case forward. The Government is currently appealing this decision to the Supreme Court.

### 3.2 Issues of concern

1. The continued use of prisons to warehouse people with mental illness in vast numbers.
2. Despite the high level of mental illness in prisons, mental health services remain inadequate. Poor availability and/or quality of psychiatric and psychological services and staff is a major concern that has been identified in most Irish prisons, including the Midlands<sup>16</sup>, Limerick<sup>17</sup>, Shelton Abbey<sup>18</sup>, Arbour Hill<sup>19</sup>, Castlerea<sup>20</sup>, Cork<sup>21</sup>, Mountjoy<sup>22</sup> and the Dochas Centre for Women<sup>23</sup>.
3. Despite repeated calls for the abolition of padded cells by the IPRT, the CPT and others, they continue to be used in some Irish prisons.
4. While the Government is taking steps to phase out the antiquated padded cell facilities, the IPRT remains concerned about whether the new “safety observation cells” will resolve the human rights issues that have plagued the use of padded cells in Irish prisons. In particular, we are concerned at a) the policy that will regulate the use of these cells, b) the possibility that the cells will be used for disciplinary reasons, c) the possibility that the cells will be used to hold suicidal prisoners, d) the length of time people are held in the cells, e) the use of these cells for juveniles, and f) the lack of a proper therapeutic ethos to the cells and who will be empowered to authorise placement in an isolation cell (particularly given the lack of psychiatric staff in the prison system).
5. The IPRT has particular concern at the detention of persons in isolation cells (whether “padded cells” or “safety observation cells”) for prolonged periods of time. This concern was heightened in 2004/5 following media reports in which a prison doctor at Castlerea Prison was critical of the detention of mentally ill prisoners in padded cells for two to four weeks at a time.<sup>24</sup> Although the Minister for Justice stated that “[t]he sort of prolonged detentions referred to...did not

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<sup>16</sup> *Midlands Prison Visiting Committee Annual Report 2004* at 4.

<sup>17</sup> *Limerick Prison Visiting Committee 2004 Annual Report* at 6.

<sup>18</sup> *Shelton Abbey Visiting Committee Annual Report 2004* at 2.

<sup>19</sup> *Visiting Committee to Arbour Hill Prison 2004 Annual Report* at 2, 5.

<sup>20</sup> *Castlerea Visiting Committee 2004 Annual Report* at 1.

<sup>21</sup> *Cork Prison Visiting Committee Annual Report 2004* at 1.

<sup>22</sup> *Mountjoy Visiting Committee Annual Report 2004* at 1.

<sup>23</sup> D Kinlen. *Irish Prisons Inspectorate: Mountjoy Prison and Dochas Centre Inspection 20<sup>th</sup>—31<sup>st</sup> January 2003* (Department of Justice, Equality and Law Reform, Dublin: 2005) at 85.

<sup>24</sup> M O’Shea. “Mentally ill prisoners ‘robbed of their dignity’” in the *Roscommon Herald* (12 May 2004).

happen<sup>25</sup>, a case of isolation for a 26-day period at Castlerea was later confirmed by the Prison Inspector.<sup>26</sup>

6. Incidents of suicide and self harm – and the Prison Service’s response – is an ongoing concern. As described by the Visiting Committee at Arbour Hill Prison in its 2004 Annual Report,

*Notwithstanding that Arbour Hill Prison did not have a history of suicides and has a proactive policy on suicide awareness and prevention (despite the Doctor not attending the previous four multidisciplinary suicide awareness meetings) and that staff interact with and closely monitor inmates it is deeply regrettable, and indeed disturbing, that there were two suicides and one attempted suicide in the course of the past year. It is also disturbing the prison authorities deemed it appropriate to seek accommodation at the Central Mental Hospital for all three inmates concerned and that all three inmates had been transferred to the CMH and had been sent back to the prison after a short stay. Within days of their return two were dead and a third was saved only by the vigilance of prison staff. Whilst understanding medical confidentiality and the relevance of statutory enquiries we still feel that further elucidation is required!<sup>27</sup>*

## 4. HIV/AIDS and Hepatitis C

### 4.1 Background

Rates of HIV and Hepatitis C infection are a serious concern in Irish Prisons.

A 1999 study of 1,200 incarcerated men and women commissioned by the Department of Justice, Equality and Law Reform, found an overall HIV infection rate of 2% and a Hepatitis C infection rate of 37%. This same study found that nearly half of the incarcerated women tested were infected with hepatitis C.<sup>28</sup>

A 2000 study of 600 remand prisoners found an overall HIV infection rate of 2% and hepatitis C infection rate of nearly 22%. Among women prisoners, the HIV seroprevalence rate was nearly 10%, and the hepatitis C infection rate was 56%.<sup>29</sup>

These studies also demonstrate a high level of drug injecting and syringe sharing among Irish prisoners. The 1999 study found a) more than 40% of prisoners reported injecting at least once in their lives, b) one in five stated first injected inside prison, c) almost half of injection drug users reported injecting while incarcerated, and d) nearly three in five reported sharing injecting equipment in prison. The study found that

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<sup>25</sup> M McDowell. Written Answer to Parliamentary Question from Jim O’Keeffe, TD (3 June 2004).

<sup>26</sup> D Kinlen, *Irish Prisons Inspectorate: Castlerea Prison Inspection 2<sup>nd</sup>—9<sup>th</sup> June 2004* (Department of Justice, Equality and Law Reform, Dublin: 2005) at 106.

<sup>27</sup> *Visiting Committee to Arbour Hill Prison 2004 Annual Report* at 3.

<sup>28</sup> Shane Allwright, *et al. Hepatitis B, Hepatitis C and HIV in Irish Prisoners: Prevalence and Risk*, (The Stationery Office, Dublin: 1999) at 10.

<sup>29</sup> Jean Long, *et al. Hepatitis B, Hepatitis C and HIV in Irish Prisoners, Part II: Prevalence and risk in committal prisoners 1999*, (The Stationery Office, Dublin: 2000) at 8, 20.

87% of those who had shared injection equipment in prison tested positive for hepatitis C.<sup>30</sup>

The 2000 study found that a) more than one-quarter of remand prisoners had injected drugs in their lives, b) of those identifying themselves as past or current injection drug users, nearly one in five first injected in prison, and c) two in five admitted to sharing injection equipment while incarcerated. The study found that 90% of injection drug users who had shared injection equipment in prison tested positive for hepatitis C.<sup>31</sup>

The rate of injecting drug use in Irish prisons is among the highest in Western Europe<sup>32</sup>, and coupled with the high prevalence of Hepatitis C and HIV infection clearly raises concerns for human rights and public health. Despite this fact, the Government has consistently refused to implement measures known to reduce HIV and Hepatitis C transmission in prisons, such as condoms and sterile injecting equipment. This failure places in violation the State's positive obligations under Article 3 of the *European Convention on Human Rights* to protect the health of prisoners, and best practice guidelines from the World Health Organisation.

#### 4.2 Issues of concern

1. Under the *European Convention on Human Rights* (as defined in the Article 3 jurisprudence of the European Court of Human Rights), the State has a positive obligation to take effective measures to protect the health of people in detention.<sup>33</sup> The IPRT believes that the Government's failure to provide effective HIV prevention measures such as sterile injecting equipment and condoms violates Ireland's positive obligations under the Convention, and places people in prison at increased vulnerability to HIV and Hepatitis C infection simply because of their status as prisoners. This failure to provide effective HIV prevention measures also contravenes WHO Guidelines<sup>34</sup> and recommendations from various Irish reports<sup>35</sup>.
2. The Minister of Justice refuses to authorise the provision of condoms and sterilising disinfectants in prisons despite the fact that the newly published Health Policy of the Prison Service states clearly that these measures should be provided.<sup>36</sup>

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<sup>30</sup> Allwright at 16-19.

<sup>31</sup> Long at 13-16.

<sup>32</sup> European Monitoring Centre on Drugs and Drug Addition. *EMCDDA Statistical Bulletin 2005* (EMCDDA, Lisbon: 2005) at Table DUP-4.

<sup>33</sup> See, *Hurtado v. Switzerland*, Eur. Ct. H.R. (ser. A 280A) (1994) at 79.; *Keenan v. United Kingdom*, 33 EHRR 38, at 91 (2001).; *Pantea v. Romania*, 40 E.H.R.R 26 (2005) at 192.

<sup>34</sup> World Health Organization, *WHO Guidelines on HIV Infection and AIDS in Prisons* (World Health Organization, Geneva: 1993).

<sup>35</sup> See, Allwright.; Long.; R Lines, *A Call for Action: HIV/AIDS and Hepatitis C in Irish Prisons* (Irish Penal Reform Trust, Dublin: July 2002).; Group to Review the Structure and Organisation of Prison Health Care Services, *Report of the Group to Review the Structure and Organisation of Prison Health Care Services* (Department of Justice, Equality and Law Reform, Dublin: September 2001).

<sup>36</sup> Irish Prison Service, *Health Care Standards* (Department of Justice, Equality and Law Reform, Dublin: June 2004) at 6.2.12, 6.2.13.

3. Methadone maintenance therapy is not provided in all prisons, therefore perpetuating unequal access to this important HIV prevention and drug treatment option. The failure to make methadone available in all prisons has been criticised by both the Irish Penal Reform Trust and the Prison Officers Association.<sup>37</sup>
4. The lack of proper pre- and post-test counselling as part of HIV testing, in violation of WHO Guidelines on HIV in Prisons. In one case reported to the IPRT a prisoner – after displaying understandable emotion upon receipt of a positive test result – was locked in a padded cell.<sup>38</sup>
5. Lack of confidentiality of HIV test results, in violation of WHO Guidelines. This includes reports to the IPRT of HIV test results being given out publicly in envelopes, rather than in private counselling sessions, and incidents of prisoners being allowed to collect test results on behalf of other prisoners.<sup>39</sup>
6. Unexplained reduction in methadone dosages between the prescribed dosage being received in the community and that provided in prisons.<sup>40</sup>
7. The Irish Prison Service is clearly failing to meet its self-defined “Core Aim” to “provide prisoners with access to the same quality and range of health services to which they would be eligible within the general community.”<sup>41</sup>

## 5. Juvenile Detention

### 5.1 Background

Young people in Ireland are detained in separate regimes depending on their age group. Those under 16 years are detained in the so-called Children Detention Schools, operated by the Department of Justice, Equality and Law Reform, while those over 16 years are detained, alongside adults (up to 21 years) in St Patrick’s Institution, operated by the Irish Prison Service under the auspices of the Department of Justice, Equality and Law Reform.

In December 2005, the Government announced its intention to reform the juvenile justice estate and to move all children detained in St. Patrick’s Institution into the Children Detention Schools, responsibility for which will be moved to the Department of Justice, Equality and Law Reform. However, initial indications are that this process – moving children out of St. Patrick’s – will take ten years. This submission is concerned with the children currently detained in St. Patrick’s Institution.

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<sup>37</sup> Lines at 18.; B O’Kelly, “Methadone Move Criticised by POA” in The Sunday Business Post, (September 17, 2000).

<sup>38</sup> In 2005, the IPRT in cooperation with UISCE (a peer support organisation for drug users based in Dublin) held a series of facilitated consultation groups with ex-prisoners who are current or former drugs users and/or methadone patients to discuss their experiences in prisons. These concerns were identified during this process.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Irish Prison Service at 6.

## 5.2 Issues of concern

1. On 21 September 2005, there were ten offenders aged sixteen years and forty-five aged seventeen years in St. Patrick's alongside approximately 150 adults aged between 18 and 21 years; on average, one third of its population is under eighteen years.<sup>42</sup> Children over 16 years thus continue to be detained alongside adults in St Patrick's Institution in contravention of Ireland's obligations under Article 37 of the *Convention on the Rights of the Child* (CRC).
2. St. Patrick's is a prison-like institution with a strong focus on containment. Despite professional management, it has been continuously criticised and its closure strongly recommended by a number of bodies, most recently the Irish Prisons Inspectorate. Many of the problems in St. Patrick's stem from the age and general unsuitability of the buildings (lack of open green spaces etc) together with severe resource restrictions, which have led to the scaling back of recreational and vocational opportunities for young people. The lack of workshops has been a source of particular concern. They were withdrawn completely in 2004 due to lack of resources and do not appear to have been reinstated since.<sup>43</sup>
3. Overall, the impact of cutbacks and limited resources in the area of education, vocational training and leisure is stark. Apart from the consequences for the young people's rehabilitation, the reduction of vocational and leisure opportunities has resulted in a high level of boredom and an increase in the level of conflict and assaults on young people and between young people and staff has been the result.<sup>44</sup>
4. Despite the fact that "basic literacy continues to be a problem" and a substantial number of the young people are unable to read or write and have very poor language skills<sup>45</sup>, their educational needs are not assessed on admission. The rate of participation in education (49% in 2004) is poor compared with adult prisons.<sup>46</sup>
5. Despite the importance to young people in detention of contact with their families and friends, visits are limited to one half hour per week in St Patrick's Institution. All letters are censored coming in and out and according to the handbook *Information for Persons in Custody*, young people must make a request in order to communicate with their solicitor. These situations appear to be in breach of Article 8 of the *European Convention on Human Rights*.
6. There is a clear and serious problem with drugs in St. Patrick's Institution, which persists despite efforts by the Governor (installing netting and CCTV in the exercise yard) to physically keep drugs out.<sup>47</sup> While these measures, taken in

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<sup>42</sup> D Kinlen. *Report of the Inspection of St. Patrick's Institution 2004-2005* (Department of Justice, Equality and Law Reform, Dublin: 2005) at 27.

<sup>43</sup> *Irish Prison Service Annual Report 2004* (The Stationery Office, Dublin: 2005) at 62.

<sup>44</sup> *Ibid.*

<sup>45</sup> *St. Patrick's Visiting Committee Annual Report 2003* at 5.

<sup>46</sup> *Irish Prison Service Annual Report 2004* (at 23).

<sup>47</sup> Kinlen. *St. Patrick's Institution 2004-2005* at 9.

2004, have greatly reduced the illegal drug supply in the Centre, they led to an apparent increase in bullying between young people with boys being intimidated into receiving drugs for others through visits.<sup>48</sup> Controlled visitation arrangements have been introduced to address this situation although boys continue to inflict injuries on each other.<sup>49</sup>

7. Boys detained in St. Patrick's do not have access to a complaints mechanism independent of the management of the Institution. Moreover, the investigative powers of the Ombudsman for Children, established under the Ombudsman for Children Act 2002, exclude those detained in St. Patrick's Institution.
8. No step-down facilities exist in St. Patrick's Institution meaning that young people are frequently released without preparation.
9. While the Government has given a commitment to removing young people under 18 years from St. Patrick's Institution, it has given no indication as to when this will occur. In the meantime, children over 16 years are detained in a prison-like regime and in circumstances that pay little regard to their age, special needs and are vastly different from the educational facilities in which under 16 years are detained.
10. In addition, the Government has announced its intention to amend the *Children Act 2001* – the legislation reforming the youth justice system which has only been part-implemented to date – to require criminal courts to take into account the educational needs of children when ordering their detention. This risks penalising children who have suffered educational disadvantage and is in conflict with the widely-accepted international principle (in Article 37 of the CRC) that detention of children must be a measure of last resort and last for the shortest appropriate period of time.

## **6. Immigration-related Detention**

### **6.1 Background**

In November 2005, the IPRT published a joint report in partnership with the Irish Refugee Council and the Immigrant Council of Ireland. The report, *Immigration-related Detention in Ireland*, was prepared by Mark Kelly of Human Rights Consultants and a) examines in detail for the first time current legislation, policy and practice on the use of detention for immigration-related reasons and, b) makes recommendations to bring Irish legislation and practice in line with international standards.

Until recently, it was comparatively rare for people to be detained for immigration-related reasons in Ireland. However, a range of statutory detention powers have been introduced to authorise the detention of people for various immigration-related reasons. Official figures published for the first time in our report show that, in 2003—2004, a total of 2,798 people were held in prison for immigration-related reasons. In

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<sup>48</sup> *Ibid* at 65.; *St. Patrick's Visiting Committee Annual Report 2003* at 6-7.

<sup>49</sup> Kinlen. *St. Patrick's Institution 2004-2005* at 11, 76.

2004, some two thirds of those detained were held in prison for periods of longer than 51 days. Although the total number of immigration detainees held in prison decreased significantly between 2003 and 2004, there was a worrying increase of 40% in the actual number of immigration detainees being held in prison for extended periods of time.<sup>50</sup>

## 6.2 Issues of concern

1. Legal Aid – There is no legal aid available for persons detained under s.9(8) of the Refugee Act 1996 (detained asylum seekers). Solicitors are currently acting on a pro bono basis in these cases and bench appointments are being made for solicitors to act on a pro bono basis. Even more worryingly, there have been some cases where applications to extend these periods of detention have been made by the Garda Síochána and detainees have been unrepresented. As there is no provision for legal aid in these cases, the right of access to a lawyer under s.10 of the 1996 Act is effectively rendered meaningless.
2. Unjustifiable delay in verifying authenticity of documentation – In respect of non-nationals on remand for criminal offences, there are some instances of unjustifiable delay due to the need to confirm identity. These persons often produce ID straight away, but remain detained for days or even weeks while the Gardaí verify its authenticity. The delay in verifying identity results in a judge being unable to assign them legal aid (solicitors again often act pro bono during this period) or release them on bail. This is one way in which non nationals on remand (oftentimes charged with a very minor offence such as s.12 of the Immigration Act 2004-not being able to produce identification documents on demand) are in practice not on an equal footing with other remand prisoners, at least in the initial stages. The procedure for verifying the identity of non-nationals in custody should therefore be expedited.
3. Overcrowding – Over 90% of the persons detained for immigration related reasons in Ireland are held in one of two prisons in Dublin: Cloverhill Prison, which holds male detainees, and the Dóchas Centre at Mountjoy Prison, which holds female detainees. Cloverhill Prison accommodates immigration detainees in overcrowded conditions, with three detainees accommodated in an 11m<sup>2</sup> cell. In respect of the Dóchas Centre which holds female detainees, the IPRT accepts that certain aspects of the regime are better, but the overcrowding problem at the Dóchas Centre negatively impacts immigration detainees held there – some detainees have been found to be sleeping on mattresses placed on the floor of an 8m<sup>2</sup> cell.<sup>51</sup> It is not appropriate that any inmate should be held in overcrowded conditions of this nature.
4. Failure to separate immigration detainees from remand and/or convicted prisoners – the IPRT is concerned that persons detained for immigration-related matters at Cloverhill are not held separately from people suspected of criminal offences. Furthermore, it is clearly unacceptable that immigration detainees at the Dóchas Centre are held together not only with remand prisoners, but also

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<sup>50</sup> Kelly at 15.

<sup>51</sup> *Ibid.*

convicted prisoners. The IPRT supports the CPT's previous conclusion that "a prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence."<sup>52</sup>

5. Inappropriate regime applied to immigration detainees – aspects of the regime at Cloverhill such as the restriction to cells for more than 17 hours per day, and significant restrictions including closed visitations are not appropriate for immigration detainees who have not committed a criminal offence.
6. Access to information for immigration detainees – the IPRT is concerned that certain practices in the context of immigration detention in Ireland do not always ensure that essential information is communicated to persons detained for immigration related reasons. The Trust has therefore called for all persons detained following refusal to land,<sup>53</sup> asylum seekers detained for a number of reasons,<sup>54</sup> and persons detained pending deportation,<sup>55</sup> to be formally notified of their right to challenge their detention, the right to inform a person of their choice of their detention, the right to have access to a lawyer and the right to have access to medical care. It is crucial that persons detained for immigration related reasons are fully informed of their rights in respect of such matters in order to render such rights effective.

## 7. Conclusion

The Irish Penal Reform Trust fully supports the work of the European Committee for the Prevention of Torture and welcomes its 2006 visit to Ireland. We also thank the CPT for this opportunity to provide a brief overview of some of our key concerns regarding the conditions in which men, woman and young people are incarcerated in this State.

Should you require further information on any of the issues identified in this report, please do not hesitate to contact our office. We also invite you to visit our website at [www.iprt.ie](http://www.iprt.ie) for a comprehensive searchable archive of over 1,500 documents related to prison issues in Ireland.

On behalf of the IPRT, we wish the Committee well in it work, and invite its members to meet with our organisation during its visit.

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<sup>52</sup> *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 28 May 2002.*

<sup>53</sup> Pursuant to section 5(2) of the Immigration Act 2003.

<sup>54</sup> Pursuant to sections 9(8) and 9(13) of the Refugee Act 1996.

<sup>55</sup> Pursuant to section 5 of the Immigration Act 1999.

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